



Tribal Consultation and Coordination at Federal Facilities

DECEMBER 2, 2019

FEDERAL FACILITIES RESTORATION AND REUSE OFFICE



Group Poll: What role have you filled when consulting or coordinating with Tribes at Federal Facilities?


Overview

- ❑ Consultation and Coordination
- ❑ Federal Facility Cleanups and Consultation Roles
- ❑ Identifying a Need for Consultation
- ❑ Tips for Developing Partnerships



[This Photo](#) by Unknown Author is licensed under [CC BY-NC](#)

Overview of EPA's Consultation and Coordination



1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations

- ❑ First formal Indian policy adopted by a federal agency.
- ❑ Outlines nine principles to guide interaction with tribes.
- ❑ Includes the following:
 - Works directly with tribal governments on a one-to-one basis
 - Removes barriers to working with tribes
 - Keep with the Federal Trust Responsibility, assures that tribal concerns and interests are considered in EPA decisions
 - Coordinates with other federal agencies to support tribes



Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments (2000)

- ❑ “The U.S. has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions.”
- ❑ “...in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory.”

EO 13175 Consultation and Coordination with Indian Tribal Governments (2000)

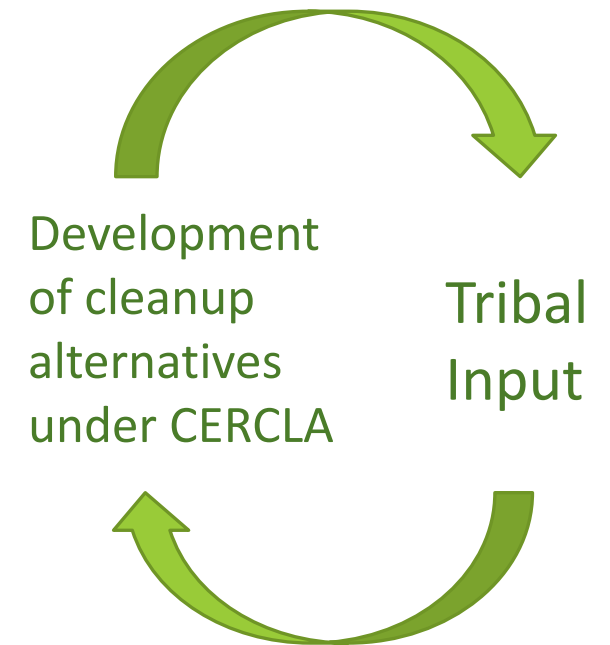
- “The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.”



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

2011 EPA Policy on Consultation and Coordination with Indian Tribes

- ❑ Establishes national guidelines and institutional controls for consultation across EPA.
- ❑ Consultation should occur early enough for tribes to provide meaningful input to be considered prior to a decision (including CERCLA actions)
- ❑ Consultation and coordination should be continued as proposals and options are developed
- ❑ There is no single formula for appropriate consultation
- ❑ A less formal process may be sufficient for routine operational matters.





Consultation vs. Coordination

- “Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes.”
- Coordination is sharing information, education, and outreach.
- Coordination can be part of consultation.
- Coordination cannot substitute for consultation.

Source: EPA Policy on Consultation and Coordination with Indian Tribes, 2011



Apply Your Understanding

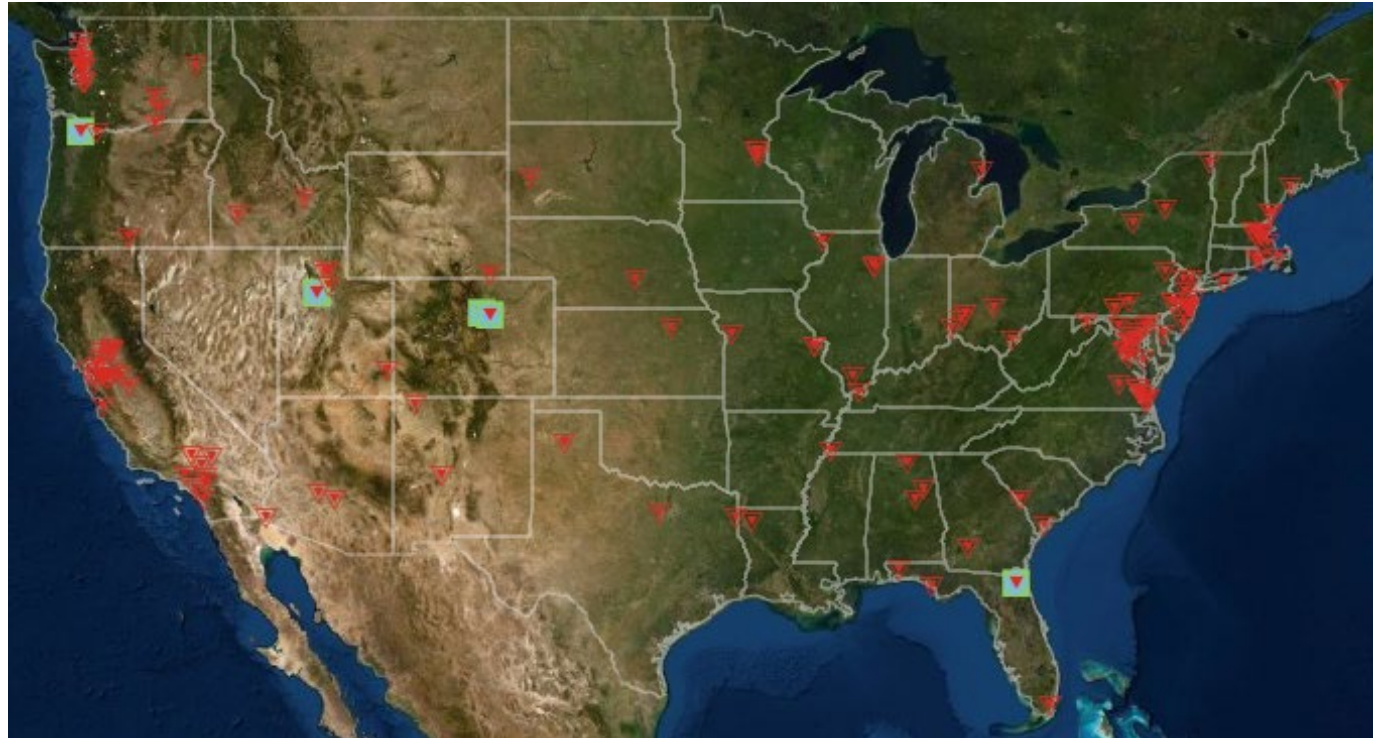
Identify each of the following activities as either a consultation or coordination activity.

1. Hosting an open house on a Non-Time Critical Removal Action
2. Meeting with Tribal leadership to discuss tribal concerns on a proposed plan and providing feedback on how their input was considered in the final remedy decision
3. Exchanging emails with Tribal technical representatives to clarify information and discuss concerns
4. Having a technical meeting to discuss issues with tribal representatives and staff

Overview of Federal Facility Cleanups



EPA and Federal Facilities



- ❑ 174 federal facilities on the National Priorities List (NPL)
- ❑ Some are contaminated with hazardous wastes and may be located in areas that are culturally or historically significant to American Indian or Alaskan Native groups.



Federally Recognized Tribes

☐ Federally Recognized Tribes

- Secretary of the Interior acknowledges group to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C. 479a. B.
- 577 recognized tribes

☐ State Recognized Tribes or Heritage Groups

- Acknowledges their status within the state but does not guarantee funding from the state or the federal government.



“Lead Agency” Definition

- ❑ The National Contingency Plan (40 CFR 300.5) states that:
 - The **Lead Agency** is the agency that provides the On-Scene Coordinators (OSCs)/Remedial Project Managers (RPMs).
 - The Department of Defense (DoD) or Department of Energy (DoE), then DoD or DoE will be the **lead agency** for their sites.
 - For sites other than those of EPA, the US Coast Guard (USCG), DOD, or DOE, then that other federal agency will be the **lead agency** for remedial actions and removal actions other than emergencies.



Role of Federal Agencies



- ❑ At Federal Facility sites (i.e., Departments of Energy, Defense, Interior, etc.), the other federal agency (OFA) is the lead agency for consultation
- ❑ Each federal agency has their own consultation procedures
- ❑ EPA may play a facilitation or coordination role if necessary.

This Photo by Unknown Author is licensed under CC BY-NC-SA



EPA's Federal Facilities Restoration and Reuse Office Tribal Program Goals

- ☐ Develop partnerships that will enhance participation through coordination
- ☐ Respect the unique needs of each tribal community
- ☐ Provide oversight at NPL sites to ensure protection of human health and meaningful public involvement
- ☐ Identify contaminated sites on or near tribal lands, as well as site property that may be transferred to tribes.



Role of Tribal Governments

- ❑ Tribal governments have distinct roles through government-to-government relationships in cleanups of federal facilities under Constitution, treaties, statutes, Executive Orders, and court decisions with the U.S government.



Tribes as Natural Resource Trustees

- ❑ CERCLA and the Oil Pollution Act (OPA) authorize the United States, States, and Indian Tribes to act on behalf of the public as Natural Resource Trustees for natural resources under their respective trusteeship
- ❑ Tribes may have critical information about the effects of hazardous substances and sensitive habitats to assist in characterizing the nature and extent of site-related contamination
- ❑ Early coordination in investigation and planning stages can help both the CERCLA and Natural Resource Damages efforts

<https://www.epa.gov/superfund/natural-resource-damages-trustees>



Federal Trust Responsibility

- ❑ The U.S. Government has a trust responsibility to federally recognized tribes, arising from Indian treaties, statutes, executive orders and historical relationships between the U.S. and Indian tribes.
- ❑ Tribes gave up or “ceded” certain rights and vast territory to the U.S. government through treaties. In those treaties, the federal government made promises to tribes regarding the protection of lands and rights that they did not give up.



EPA Federal Trust Responsibility

- ❑ Cleanup actions should be consistent with the protection of tribal rights arising from treaties, statutes and executive orders.
- ❑ In many treaties (especially those negotiated in the 1850's and 1860's) the tribal governments reserved hunting, fishing, and gathering rights in territories beyond land that they reserved for occupation.



Apply Your Understanding

At a federal facility listed on the NPL, the agency responsible for conducting consultation with Tribes:

A. EPA

B. State

C. Community Groups

D. Lead Agency

Identifying a Need for Consultation



Tribal Consultation

Consultation is triggered whenever an agency decision, activity, or action “may affect tribal interests.”

The consultation process may include several methods of interaction that may occur at different levels and in different forms (e.g., requests for comments to individual meetings).



Tribal Consultation

- ❑ A process through which the lead agency interacts with tribal governments when actions and decisions in the remedial process may affect tribal interests.
- ❑ Informal interactions can help improve consultation by allowing for regular interaction between the project team and technical representatives
- ❑ Formal consultation should be offered to tribal leadership



Examples of Tribal Interest Considerations

- ☐ Do tribal members use resources from the impacted zone?
- ☐ Is a tribe a Natural Resource Trustee of the affected resource?
- ☐ Is the affected area within a tribal historic area or traditional cultural property?
- ☐ Is the affected area linked ecologically, culturally, visually or hydrologically to tribal resources or uses?

If you answered yes (or don't know the answer) to any of these questions, you likely need to reach out to the affected Tribe(s)



When to Offer Consultation in CERCLA Response Actions

- ❑ Emergency responses –primarily notification
- ❑ Time-critical removals – consult as time allows
- ❑ Non-time critical removals – consultation occurs
- ❑ Remedial actions – consultation occurs
 - May be needed at multiple points of the CERCLA process



Examples of Superfund Actions or Decision Points

- ❑ Site Proposals and finalizations to the NPL
- ❑ Remedial Investigation/Feasibility Studies
- ❑ Proposed Plan/Records of Decision (ROD)
- ❑ NPL Deletions

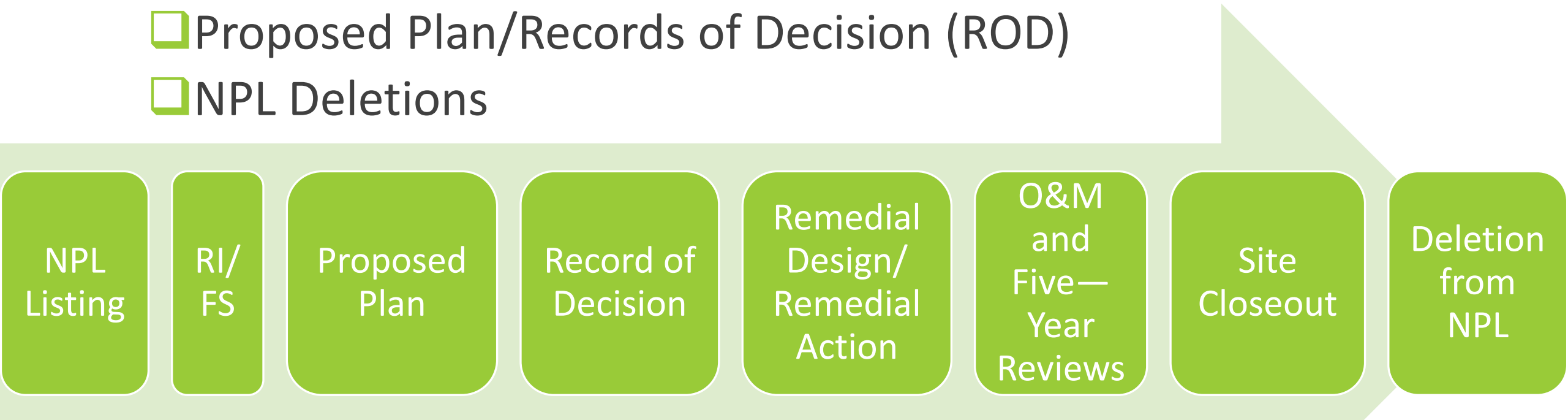
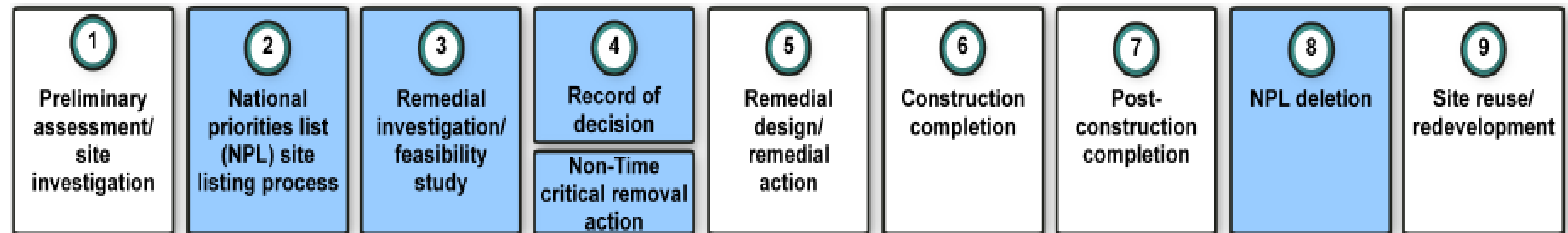




Figure 1: Phases in the Superfund Cleanup Process When the Environmental Protection Agency Should Document Consultation with Tribes



 Office of International and Tribal Affairs recommends that, at a minimum, upcoming and current consultations should be entered into the Tribal Consultation Opportunities Tracking System at these phases of the Superfund cleanup process.

Source: GAO analysis of Environmental Protection Agency information. | GAO-19-123



Importance of Documentation

- ☐ Correspondence (emails, letters, phone records, etc.) between the lead agency and the tribe providing documents, information or receiving comments from the tribe.
- ☐ Documentation of meetings.
- ☐ Request for or submission of ARARs.
- ☐ Ensure documentation is included in Administrative Record.

Apply Your Understanding

Which of the following is **NOT** an example of a way to build relationships between government agencies and tribal governments involved in federal facility cleanups?

- A. Interacting with representatives from each group on a regular basis.
- B. Hosting a technical meeting or workshop to discuss a proposed cleanup approach.
- C. Calling a representative from one of the groups with questions or concerns.
- D. Waiting until a cleanup decision is reached before engaging with tribal governments affected by the cleanup.

Tips for Developing Partnerships



Tips for Successful Consultation

- ☐ Engage early and often
- ☐ Respect the government-to-government relationship
- ☐ Recognize multiple tribes may be interested in consultation
- ☐ Document consultation but be sensitive to confidentiality concerns

Tips to Build Partnerships

- ❑ Although EPA does not serve as the lead cleanup agency at most federal facility cleanups, EPA can help provide information and opportunities for discussion with Tribal representatives.
- ❑ EPA can serve to communicate concerns and goals more thoroughly as the lead oversight agency.



This Photo by Unknown Author is licensed under [CC BY-SA](#)

Tips to Build Partnerships

□ Communication can be a mix of:

- Written comments (e.g., email, letters,)
- Phones conversations
- In-person conversations



Tips to Build Partnerships

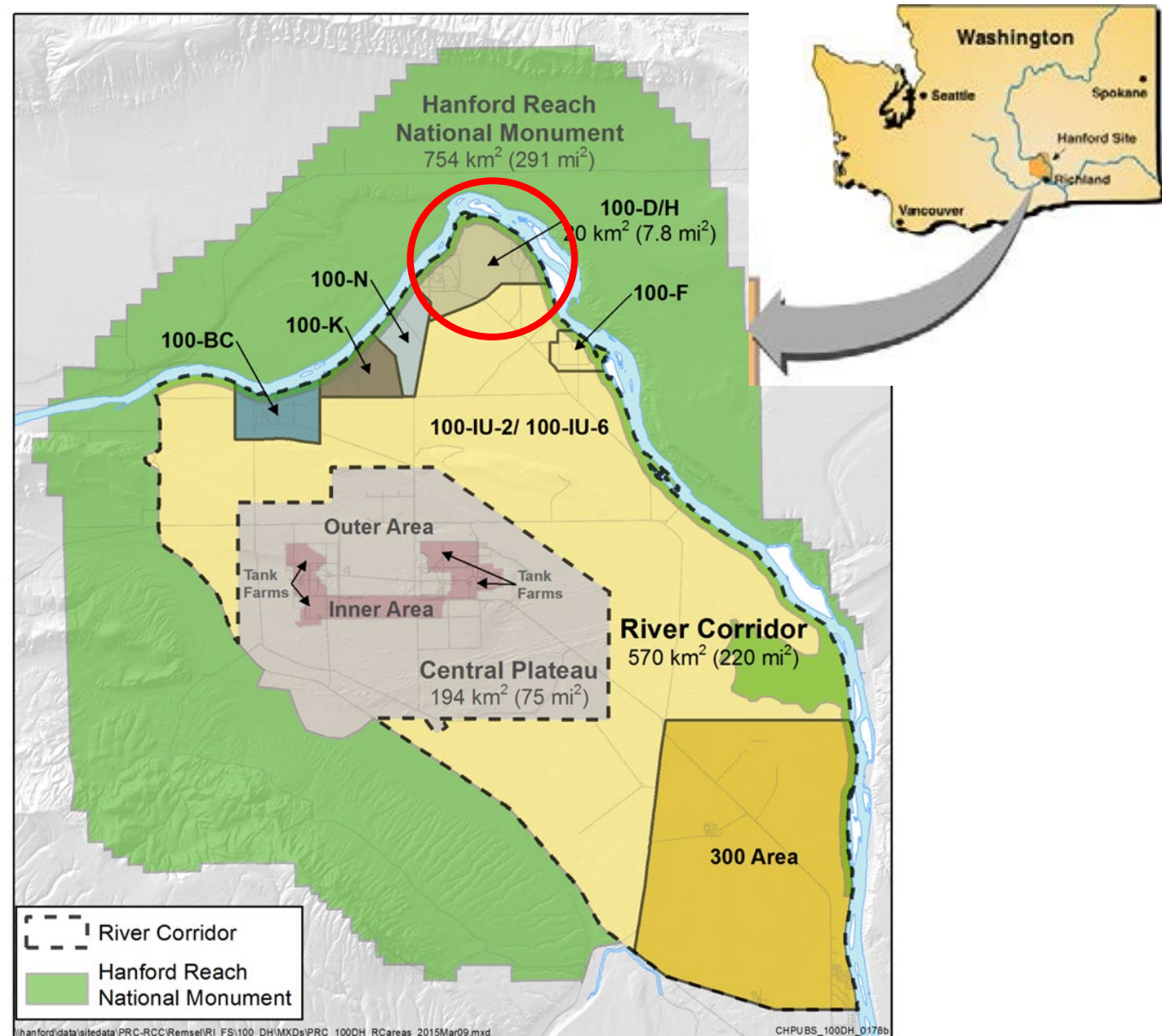
- ❑ Encourage regular (informal) interactions between lead agency and/or regulators with Tribal representatives.
 - Discuss ongoing concerns and provide opportunities for face-to-face discussions.
 - May help groups be prepared in the event formal consultation is needed.
- ❑ Participants in these informal interactions will likely differ from those involved in formal consultation.



This Photo by Unknown Author is licensed under [CC BY-SA](#)

Hanford Case Study

- ❑ Land was ceded to the United States under separate treaties with Tribal nations
 - Confederated Tribes of the Umatilla Indian Reservation
 - Confederated Tribes and Bands of the Yakama Nation
 - Nez Perce Tribe
- ❑ DOE is primarily responsible for consulting with Tribal Nations at Hanford
- ❑ EPA interacts with Tribal representatives through technical meetings, phone calls, and emails based on requests





Elk by the Hanford 100 H Area

Hanford Case Study

- ❑ 100 D&H Reactor Areas located along the Columbia River
- ❑ Record of Decision was expected to be signed in October 2017
- ❑ Tribal concerns had not been addressed earlier in the CERCLA process
- ❑ A delay occurred as DOE worked through consultation activities
- ❑ ROD was issued in July 2018 with letter of support from the Yakama Nation

Tools for Identifying Contaminated Lands



Tools for Identifying Contaminated Lands

- ❑ “Cleanups in My Community” Map with Tribal Layer
 - The Cleanups in My Community Map provides an interactive map, allowing you to zoom and in and out of areas of interest in the United States and see what contaminated lands and cleanup efforts are near you.
 - <https://ofmpub.epa.gov/apex/cimc/f?p=cimc:map:0:::71>

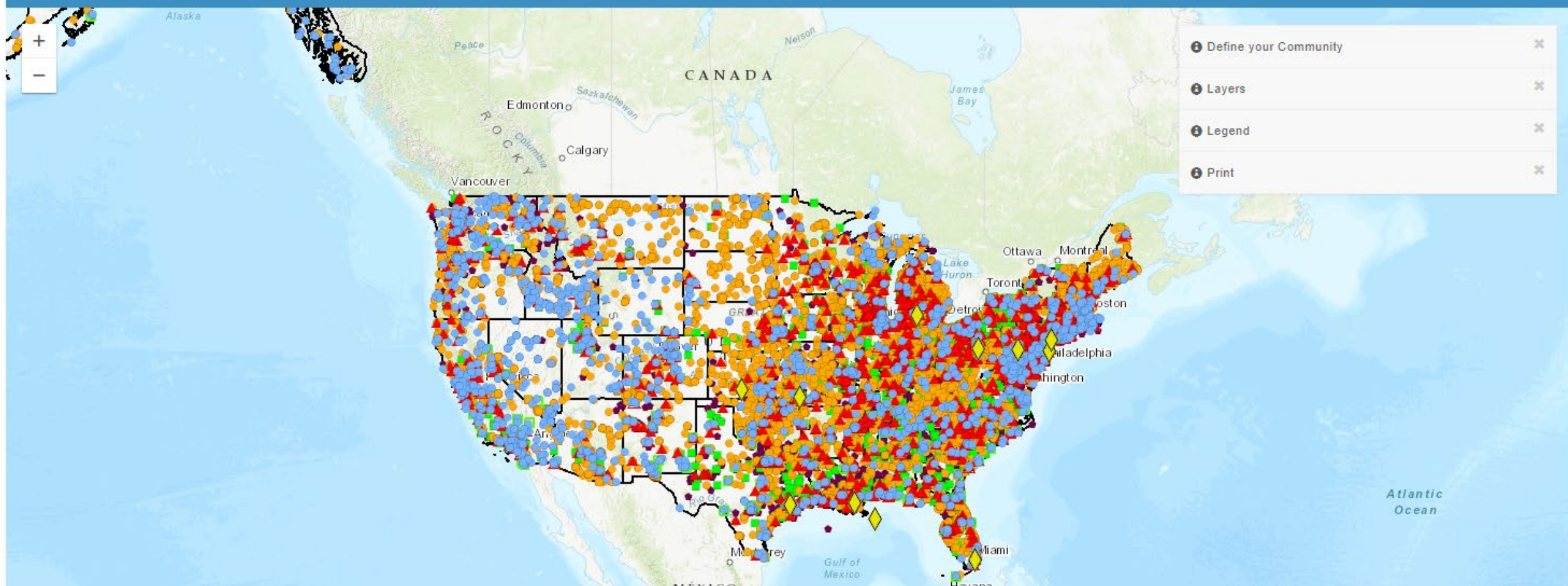
[Cleanups](#) » [Cleanups in My Community](#)

Cleanups In My Community Map

[CONTACT US](#) [ABOUT THE DATA](#) [LEGAL NOTICES](#)

▼ Cleanups ▼ Brownfields Grants ☒ Site Boundaries (where available)

Layers, Legend, & Print ...





[Cleanups](#) » [Cleanups in My Community](#)

Cleanups In My Community Map

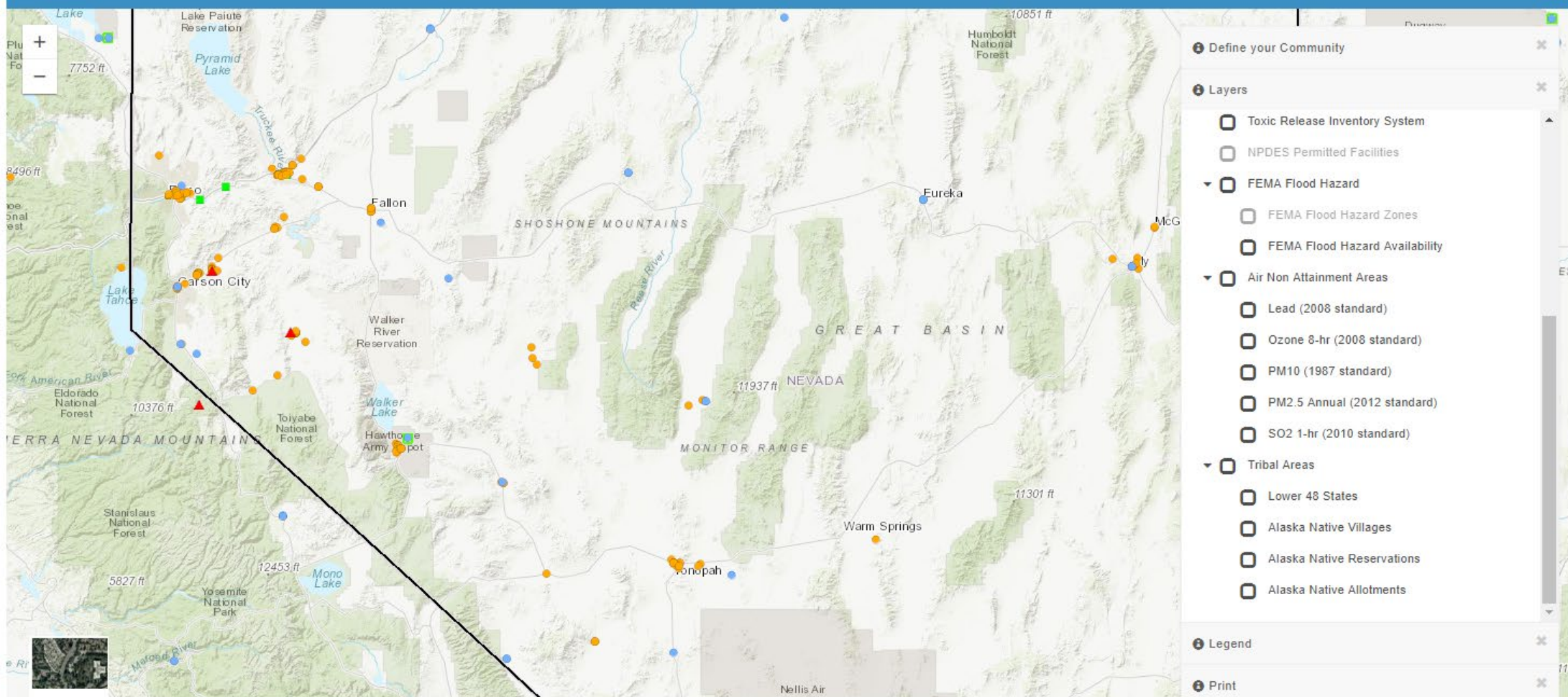
[CONTACT US](#) [ABOUT THE DATA](#) [LEGAL NOTICES](#)

▼ Cleanups

▼ Brownfields Grants

✓ Site Boundaries (where available)


Layers, Legend, & Print ...





Cleanups » [Cleanups in My Community](#)

Cleanups In My Community Map

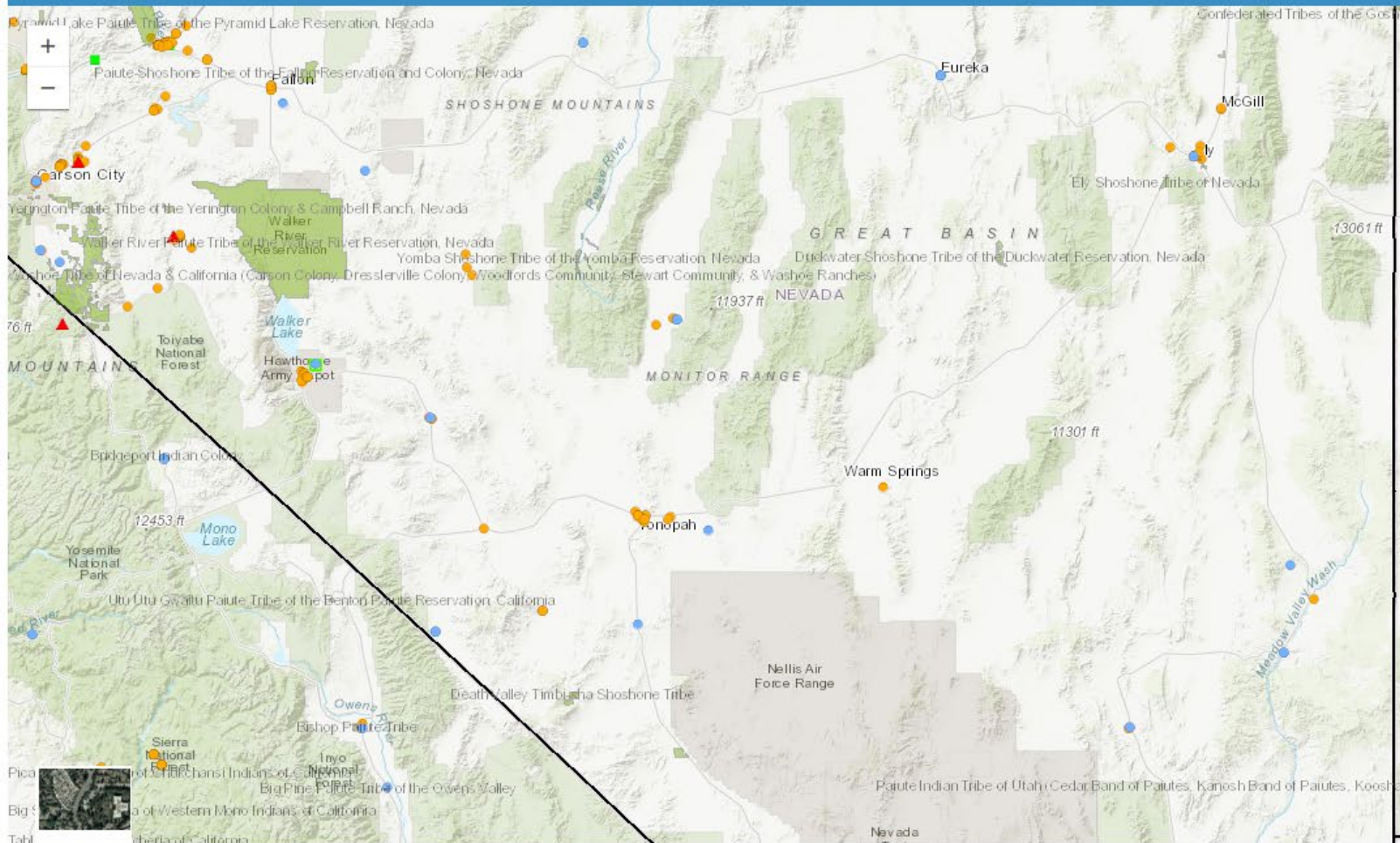
[CONTACT US](#) [ABOUT THE DATA](#) [LEGAL NOTICES](#)

 Cleanups

 Brownfields Grants

 Site Boundaries (where available)

Layers, Legend, & Print ...



Define your Community

Layers

☐ Toxic Release Inventory System

☐ NPDES Permitted Facilities

☒ FEMA Flood Hazard

☐ FEMA Flood Hazard Zones

☐ FEMA Flood Hazard Availability

☒ Air Non Attainment Areas

☐ Lead (2008 standard)

☐ Ozone 8-hr (2008 standard)

☐ PM10 (1987 standard)

☐ PM2.5 Annual (2012 standard)

☐ SO2 1-hr (2010 standard)

☒ Tribal Areas

☒ Lower 48 States

☒ Alaska Native Villages

☒ Alaska Native Reservations

☒ Alaska Native Allotments


Legend


Print


FEDFacts Tool


❏ FedFacts website:
<https://www.epa.gov/fedfac/fedfacts>


- FEDFacts contains cleanup status information related to Federal Facilities contained in EPA's Federal Agency Hazardous Waste Compliance Docket (the Docket).


 **Map of Docket Sites**

 **Docket Facilities**

 **Dashboard**

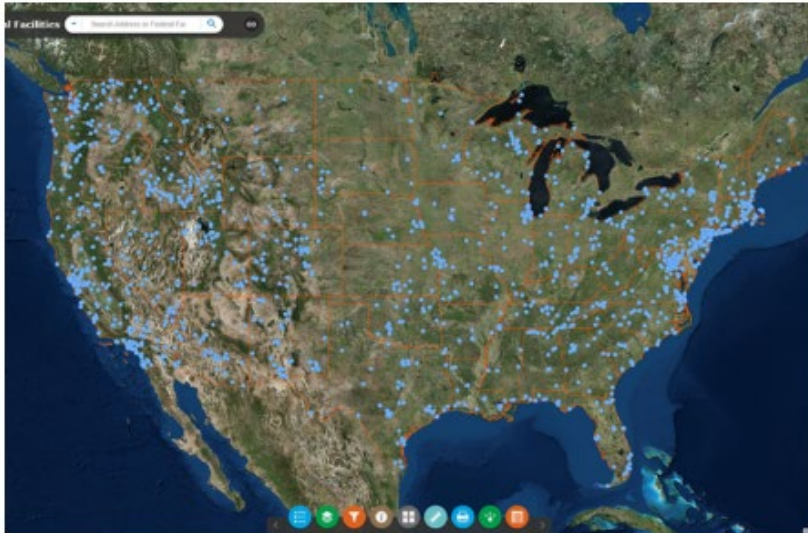
 **Site Spotlight**

 **Property Reuse**

 **News**

Map of Docket Sites

View the [Federal Facility Docket Sites map](#) to search by street address, city, county or other geographies to locate EPA Federal Facility Docket sites in communities across the U.S.



[View the full version of Cleanups in My Community](#), which includes information on Federal Facility sites, other Superfund sites, RCRA, Brownfields and Emergency Response sites



Additional Resources

- ❑ Federal Facilities Restoration and Reuse Office (FFRRO)
 - FFRRO works with other federal entities to help them develop creative, cost-effective solutions to their environmental problems.
 - <http://www2.epa.gov/fedfac/tribes-and-federal-facilities>
- ❑ American Indian Environmental Office (Office of International and Tribal Affairs)
 - This office coordinates the EPA-wide effort to strengthen health and environmental protection in Indian Country.
 - <http://www.epa.gov/indian>
- ❑ Agency for Toxic Substances and Disease Registry (ATSDR)
 - ATSDR's Office of Tribal Affairs assists with tribal-specific environmental health needs resulting from exposure to hazardous waste sites and pollution.
 - <http://www.atsdr.cdc.gov>



Additional Resources

- ❑ Department of Agriculture (USDA) <http://www.usda.gov/tribalrelations>
 - USDA is committed to serving tribal organizations and individual American Indians and Alaska Natives.
- ❑ Department of Defense (DoD) <https://www.namsei.com>
 - DoD has a tool called the Native American Management System for Environmental Impacts, which tracks and maintains information on potential impacts on tribal lands from past DoD activities.
- ❑ Department of the Interior (DoI) <http://www.doi.gov/tribes/index.cfm>
 - The Department of the Interior places a high priority on respecting the government-to-government relationship between the federal government and federally recognized American Indian and Alaska Native tribes.
- ❑ Department of Energy (DoE) <http://energy.gov/em/services/communication-engagement/em-tribal-programs-indian-country>
 - DoE's Office of Environmental Management is committed to cleaning up sites that were once part of the nation's nuclear weapons complex. Several of these areas are close or adjacent to tribal nations and impact Indian lands and resources.
- ❑ Tribal Directory Assessment Tool (TDAT) <https://egis.hud.gov/tdat/>



Additional Resources

- ❑ 2016 – EPA Guidance for Discussing Tribal Treaty Rights
- ❑ 2017 – OLEM – Considering Traditional Ecological Knowledge during the Cleanup Process
- ❑ 2017 – OSRTI Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program
- ❑ "Consulting with Indian Tribal Governments at Superfund Sites (A Beginner's Booklet)

Course Summary

- ❑ The lead agency at Federal Facilities is primarily responsible for conducting formal consultation with tribal groups
- ❑ Regular (informal) interactions between lead cleanup agency, regulators, and Tribal representatives helps build strong relationships
- ❑ Although not the lead agency at federal facilities, EPA can be a resource for tribes in federal facility cleanups
- ❑ Formal consultation will include tribal officials and upper management from the federal agencies

Questions



Contact Information

➤ Mary T. Cooke, FFRRO

202-564-0788

Cooke.Maryt@epa.gov

➤ Amanda Van Epps, OSRTI

703-603-8855

VanEpps.Amanda@epa.gov

➤ Emerald Laija, FFRRO

202-564-2724

Laija.emerald@epa.gov

